

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Order Instituting Investigation and Order to Show Cause on the Commission's Own Motion into the Operations and Practices of Warner Lee Fischer, an Individual, Pacific Coast Moving & Storage, Inc., a Nevada Corporation, its President, Warner Lee Fischer, and its Vice President, Philip Edward Dresser, Jr.

Investigation 04-08-021
(Filed August 19, 2004)

**SCOPING MEMO AND RULING OF ASSIGNED
COMMISSIONER AND ADMINISTRATIVE LAW JUDGE**

Summary

This ruling and scoping memo confirm rulings made at the prehearing conference in this investigation, held on Tuesday, November 9, 2004, and sets forth the schedule, the issues, and the procedural requirements for Warner Lee Fischer, an Individual, Pacific Coast Moving & Storage, Inc., a Nevada Corporation, its President, Warner Lee Fischer, and its Vice President, Philip Edward Dresser, Jr. (Respondents) to defend themselves against the allegations set forth in the Order Instituting Investigation and Order to Show Cause (OII/OSC).

Prehearing Conference

The October 21, 2004, ruling of the Administrative Law Judge (ALJ) directed respondents and the Commission's Consumer Protection and Safety Division (CPSD) to attend a prehearing conference on November 9, 2004, at

10 a.m., in the Commission courtroom at the Commission headquarters in San Francisco, California. Respondents did not appear in person or by representation.

Scoping

The scope of this investigation is as established in Investigation 04-07-003. The issues to be addressed are:

1. Did respondents violate section 5314.5 of the Pub. Util. Code by advertising and holding themselves out to the public as a licensed carrier;
2. Did respondents violate section 5135 of the Pub. Util. Code and Rule 1 of the Commission's Rules of Practice and Procedure by failing to divulge to the Commission the criminal record of the corporation president, Warner Lee Fischer;
3. Did respondents violate sections 5139 and 5161 of the Pub. Util. Code and General Order (GO) 100-M by failing to procure and maintain on file with the Commission adequate liability insurance;
4. Did respondents violate sections 5139 and 5161 of the Public Utilities Code and GO 136-C by failing to procure and maintain on file with the Commission adequate cargo insurance;
5. Did respondents violate section 5133 of the Public Utilities Code by conducting operations as a household goods carrier without a permit in force from the Commission authorizing those operations;
6. Did respondents violate section 5135.5 of the Public Utilities Code by failing to procure workers' compensation insurance coverage for its employees;
7. Did respondents violate sections 5139 and 5161 of the Public Utilities Code and General Order 100-M by failing to provide the required information, including a "Not To Exceed Price," on its shipping documents;

8. Did respondents violate section 5139 of the Public Utilities Code by failing to furnish to each prospective shipper a copy of the information specified in Item 470 of MAX 4, in violation of Item 88 of MAX 4;

9. Did respondents violate section 5245 of the Public Utilities Code by charging in excess of the maximum allowable charge on estimated services, and failing to obtain a change order for increased charges in violation of Items 108 and 120 of MAX 4;

10. Should respondents be denied their pending application for household goods carrier permit, File No. T-189, 607;

11. Should respondents be fined; and, if so, in what amount; and

12. Should respondents be required to make restitution to the aggrieved customers.

Schedule

Pursuant to the final ordering paragraph in the OII/OSC and as CPSD confirmed at the prehearing conference, CPSD previously served on respondents, and on respondents' last known counsel of record Padideh S. Jafari, the prepared testimony and statements of its staff witnesses and the consumer witnesses identified in the OII/OSC.

CPSD will serve the declarations of two additional consumer witnesses, Joette Coil and Nic Frank, on November 29, 2004.

CPSD is directed to provide the ALJ with two copies of all prepared testimonies, statements and declarations of its witnesses by November 29, 2004.

Respondents may file, by December 13, 2004, a motion for leave to serve responsive testimony, with that prepared testimony attached to the motion. The motion shall be supported by a declaration showing good cause why respondents did not appear at the prehearing conference. If no such motion is

filed, or if the motion is denied for failure to show good cause, the ALJ will admit into evidence the prepared testimony, statements, and declarations of CPSD's witnesses, and the matter will be submitted on brief to be filed January 28, 2005.

Our goal is to resolve this case as soon as possible and we anticipate that the resolution will not exceed 12 months from the date of filing the investigation, pursuant to Pub. Util. Code § 1701.2(d).¹

Categorization and Need for Hearings

The OII/OSC preliminarily categorized this proceeding as adjudicatory. No party appealed that determination.

The OII/OSC states that this matter will be set for evidentiary hearings. As discussed above, if respondents do not move for leave to present evidence and show good cause for failure to appear at the prehearing conference, the evidentiary record will be developed without hearing.

Assignment of Proceeding

Geoffrey Brown is the Assigned Commissioner and designates ALJ Yacknin as the presiding officer.

Service List

The service list for this proceeding is attached to this Scoping Memo as Appendix A. Parties are required to serve all pleadings, testimony, etc. on the Appearances and State Service categories; on the respondents, Pacific Coast Moving & Storage, Inc., its President Warner Lee Fischer and its Vice President Philip Edward Dresser, Jr., 10315 Woodley Avenue, Suite 118, Granada Hills, CA

¹ Section 1701.2(d) states that adjudication cases shall be resolved within 12 months of initiation unless the Commission makes findings why that deadline cannot be met and issues an order extending that deadline.

91344; and on the respondents' last known counsel of record, Padideh S. Jafari, Attorney at Law, Jafari & Associates, 16000 Ventura Blvd., 5th Floor, Encino, California 91436.

Communications With Decisionmakers (Ex Parte Communication)

Pursuant to Pub. Util. Code § 1701.2(b), ex parte communications are prohibited in this proceeding. For example, a party or any other person who has a financial interest in this proceeding is prohibited from speaking with a decision maker on a substantive issue in this case. (See Pub. Util. Code §§ 1701.1, 1701.2 and Rules 5 and 7 of the Commission's Rules of Practice and Procedure for specific rules on ex parte communications.)

IT IS RULED that:

1. The schedule and issues to be addressed are set forth in this Scoping Memo, unless subsequently modified by Assigned Commissioner or Assigned Administrative Law Judge directive.
2. Administrative Law Judge Yacknin is the presiding officer in this proceeding.
3. The service list for this proceeding is attached as Appendix A.
4. Pursuant to Pub. Util. Code § 1701.2(b), ex parte communications are prohibited.

Dated November 16, 2004, at San Francisco, California.

/s/ GEOFFREY F. BROWN
Geoffrey F. Brown
Assigned Commissioner

/s/ HALLIE YACKNIN
Hallie Yacknin
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated November 16, 2004, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

I.04-08-021 GFB/HSY/hl2

(415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

APPENDIX A
******* SERVICE LIST *******
Last Update on 15-NOV-2004 by: LIL
I0408021 LIST

******* APPEARANCES *******

Gregory Heiden
CALIFORNIA PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
505 VAN NESS AVENUE
SAN FRANCISCO CA 94102
(415) 355-5539
gxh@cpuc.ca.gov
For: CPSD

Philip Edward Dresser, Jr.
Vice President
10315 WOODLEY AVENUE, SUITE 118
GRANADA HILLS CA 91344

Padideh S. Jafari
Attorney At Law
JAFARI & ASSOCIATES
16000 VENTURA BLVD., 5TH FLOOR
ENCINO CA 91436
(818) 785-7272
attorney@jafarilaw.com

Warner Lee Fischer
President
PACIFIC COAST MOVING & STORAGE, INC.
10315 WOODLEY AVENUE, SUITE 118
GRANADA HILLS CA 91344

******* STATE EMPLOYEE *******

Richard Clark
Consumer Protection & Safety Division
RM. 2205
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-2349
rwc@cpuc.ca.gov

Maxine Harrison
Executive Division
RM. 500
320 WEST 4TH STREET SUITE 500
Los Angeles CA 90013
(213) 576-7064
omh@cpuc.ca.gov

Suong T. Le
Consumer Protection & Safety Division
AREA 2-C
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-1216
stl@cpuc.ca.gov

Hallie Yacknin
Administrative Law Judge Division
RM. 5003
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-1675
hsy@cpuc.ca.gov

******* INFORMATION ONLY *******

Gregg Bragg
CALIFORNIA HIGHWAY PATROL
PO BOX 942898
SACRAMENTO CA 94289-0001

Vahak Petrossian
Consumer Protection & Safety Division
RM. 500
320 WEST 4TH STREET SUITE 500
Los Angeles CA 90013
(213) 576-7077
vap@cpuc.ca.gov

Paul Wuerstle 3
Consumer Protection & Safety Division
RM. 2107
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-2183
pww@cpuc.ca.gov

APPENDIX A
******* SERVICE LIST *******
Last Update on 15-NOV-2004 by: LIL
I0408021 LIST

(End of Appendix A)